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Delegation of Remedy Selection to Regions

(U.S.) Environmental Protection Agency, Washington, DC

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WASHINGTON, D.C. 20460

MAR 24 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OSWER DIRECTIVE 9260.1-09

MEMORANDUM

SUBJECT: Delegation of Remedy Selection to Regions

FROM: J. Winston Porter
Assistant Administrator

TO: Regional Administrators
Regions I-X

This memorandum presents revisions to the Record of Decision (ROD) delegation procedures designed to streamline the process and to achieve the FY '86 target of Regional Administrator signature on 90 percent of all selection of remedy documents. Current procedures require the submission of a Delegation Analysis Summary (DAS) following completion of the Remedial Investigation. The Office of Emergency and Remedial Response (OERR) or the Office of Waste Programs Enforcement (OWPE) now evaluates the DAS against delegation criteria and consults with each other and the Office of General Counsel (OGC). Approved requests were issued periodically in Remedy Delegation Reports. Last year we had a target of 60 percent ROD delegations but actually 80 percent of all RODs signed were Regionally approved.

FY '86 Delegation Procedures

The Regional Administrator (RA) is requested to submit recommendations for remedy selection decisions quarterly to the Assistant Administrator of the Office of Solid Waste and Emergency Response (AA-OSWER). For each site, the Region is requested to submit a simple, one-page summary of relevant information and issues concerning the site response, with the Regional recommendation for delegation (see Attachment 1). The RA has two options to consider:

Option 1 - Recommend the AA-OSWER retain selection of remedy authority.

The AA-OSWER would be the remedy selection official for those decisions which could involve:

1) Fund balancing (where the total cost of all site response is expected to exceed $40 million);

2) Major public interest exceptions (used by enforcement as an exception to the compliance with other environmental laws); or

3) Major precedent-setting or nationally significant circumstances, including those decisions at enforcement (or responsible party) lead sites which are nationally managed or nationally significant.

Option 2 - Recommend the AA-OSWER delegate selection of remedy to the RA.

In most cases, the RA would be delegated the remedy selection. However, once delegation occurs, ongoing consultation between the regional project manager and the Headquarters regional coordinator should not diminish. Moreover, there are some areas of special interest where consultation might be more appropriate at higher levels including:

1) Ground water contamination due to multiple sources;

2) Betterment (when State preferred remedy is more expensive than cost-effective alternative);

3) Public interest exception; or

4) Precedent-setting or nationally significant circumstances.

In submitting recommendations for delegation, the Region should provide its view on the appropriate level of consultation beyond the current levels of Regional and Headquarters discussions (see Attachment 1).

Implementation

Each Region is requested to submit recommendations for third quarter decisions to this office by April 4. Upon receipt of the letter of recommendation, OERR/OWPE will evaluate RA recommendations and prepare as soon as possible a remedy delegation report (RDR) listing those sites for which remedy selection is to be delegated. A sample RDR is attached as Attachment 2.

Point of Contact

If you have any questions concerning the new procedures, please contact Steve Golian (FTS 475-6703) of OERR or Frank Russo (FTS 382-4838) of OWPE.

Attachments

Attachment #1

Delegation Briefing

Leetown Pesticides
Jefferson County, West Virginia

Delegation Criteria:

General remedial measures in which off-site contamination is limited.

Site Description:

- Site is composed of eight areas of concern relative to surface disposal of pesticides, agricultural use of pesticides and landfilling.
- Remedial Investigation found that only three of the areas have DDT levels above health-based soil levels.
- The three affected areas are not presently being used for agricultural purposes. These areas would pose a potential health risk via dermal/inhalation exposure of contaminants to farmers who may be plowing, tilling or harvesting in the future.
- Ground water is not contaminated at Leetown.

Issues:

1/
- Although the orchard areas (outside of the 3) have contamination above the 10^{-6} level, the Region is proposing no action for these areas. The levels in these orchard areas are similar to mean residue levels in U.S. orchards.
- The site area is underlain by a highly folded carbonate rock layer and does not meet the conditions for siting a hazardous waste facility. Due to the immobile nature of the contaminants, Region may still consider on-site respose actions.
- Anaerobic decomposition is being considered for remediation of contaminated soils.

Recommendation:

It is recommended that the selection of the remedial action be delegated to the Regional Administrator [with consultation between Regional Branch Chief and appropriate Headquarters Division Director].*

1/ National background level for arsenic in apple orchards calculated to pose a 10^{-3} risk; precedent-setting issue on level of cleanup under CERCLA for apple orchards.

* Optional depending upon the proposed site remedy and consultation criteria.

Attachment #2

New RDR Format

MEMORANDUM

SUBJECT: Remedy Delegation Report

FROM: J. Winston Porter
Assistant Administrator

TO: Regional Administrators
Regions I-X

I have reviewed your recommendations for delegation and summary back-up information on the issues. Delegation decisions are presented below.

Delegated to RA

Site A, Region I - source control of lagoons, landfills and soils

Site B, Region II - management of ground water migration (consultation between Regional Branch Chief and Hazardous Site Control Division Director)

Site C, Region V - stabilization of lagoons

Retained for AA-OSWER approval

Site D, Region VI - ground water contamination due to multiple sources (with Fund-balancing consideration)

Further questions should be addressed to ....